

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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PALMER/KANE LLC,)	
)	
Plaintiff,)	Case No: _____
)	
v.)	
)	COMPLAINT
DORLING KINDERSLEY PUBLISHING, INC.,)	
d.b.a. DK PUBLISHING, INC.)	DEMAND FOR
)	JURY TRIAL
Defendant.)	
)	
_____)	

Plaintiff, Palmer/Kane LLC, by and through its undersigned counsel, for its Complaint against Defendants DK Publishing, Inc., d.b.a. DK Publishing, Inc., alleges as follows:

JURISDICTION AND VENUE

1. This is an action for copyright infringement by reason of Defendant's infringing uses of Plaintiff's copyrighted photographs.

2. This Court possesses subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. Sections 1331 and 1338(a), because this action arises under the Copyright Act of 1976, 17 U.S.C. Sections 101 et seq.

3. This Court possesses general personal jurisdiction over Defendant DK Publishing, Inc., pursuant to N.Y. C.P.L.R. § 301, because Defendant DK Publishing, Inc. is engaged in such a continuous and systematic course of "doing business" in New York as to warrant finding it "present" in the jurisdiction. In addition, this Court possesses personal jurisdiction over Defendant DK Publishing, Inc., pursuant to N.Y. C.P.L.R. § 302(a)(1), because the Defendant transacts business within this state,

including in this judicial district, and contracts to supply goods or services in the state, including in this judicial district. On information and belief, Defendant DK Publishing, Inc. sells and distributes its publications via its employees and agents in New York and throughout the United States, including publications that are at issue in this action, in which Palmer/Kane's photographs are unlawfully reproduced. Further, Defendant DK Publishing, Inc. has a business address in this judicial district.

4. Venue is proper in this District under 28 U.S.C. Sections 1391(a) and (b) and 1400(a), since Defendant resides or may be found in this District and a substantial portion of the misconduct by Defendant here alleged occurred in this District.

THE PARTIES

5. Gabe Palmer, a resident of the State of Connecticut, is a professional photographer who makes his living taking and licensing photographs.

6. The Plaintiff, Palmer/Kane LLC, is a Vermont limited liability corporation with a place of business at 77 Soundridge Road, Shelton, Connecticut 06484. Palmer/Kane is a two-man company owned and operated by a husband and wife team: Gabe Palmer and Pat Kane.

7. Gabe Palmer created the photographs herein alleged as works-made-for-hire for Plaintiff or its predecessor, Palmer/Kane, Inc. (collectively "Palmer/Kane").

8. Palmer/Kane is a stock photography production company that produces commercial imagery licensed through agencies such as Corbis Corporation ("Corbis"), Getty Images, Inc. ("Getty Images") and Alamy Ltd. ("Alamy") and occasionally directly to the end user. Palmer/Kane has been in business for 40 years. Over the last 20 years,

Palmer/Kane has issued, through its agents, over 5,000 licenses for book use through The Stock Market (“TSM”) and Corbis, many of them to Defendant DK Publishing, Inc.

9. All Palmer/Kane images represented by Corbis, its predecessor TSM, Getty Images, and the majority of images represented by Alamy are licensed under the rights management (“RM”) model. RM license fees are calculated based on the specific media in which the image will appear and the exposure the image will have. Factoring the fee requires consideration of industry, media, image size, frequency, image placement, languages, geographic distribution, print run, and start/expiration dates. The licensing agency’s price calculator constitutes a good indicator of the breadth and depth of licensed use.

10. Palmer/Kane is the owner of the copyrights in and to each of the photographs of Gabe Palmer as to which a claim of copyright infringement is asserted in this Complaint.

11. On information and belief, Defendant DK Publishing, Inc. (“DK”) is a Delaware corporation with a place of business at 345 Hudson Street, New York, New York 10014.

12. DK is a publishing company in the business of creating and publishing reference books and other similar materials and publications.

13. DK describes itself on linked-in (<https://www.linkedin.com/company/dorling-kindersley>) as:

an award-winning multinational publisher of distinctive, highly visual products for adults and children. . . . produc[ing] content for consumers in over 100 countries and 60 languages, from offices in Delhi, London, Melbourne, Munich, New York City and Toronto. . . . we are enormously proud to be the world’s leading illustrated reference publisher. . . . Everything we make, from books to eBooks and apps, gives unrivaled

clarity to topics with a unique combination of words and pictures, assembled to spectacular effect.

FACTS

14. Palmer/Kane is the copyright owner of all images produced by Gabe Palmer as works for hire, and bearing the credit Gabe Palmer, Palmer Kane, or the brand name “Mug Shots” or (sic) “Mugshots.” This includes the photographs of Gabe Palmer that are named, depicted and described in Exhibit A hereto.

15. Palmer/Kane LLC acquired the rights to all Palmer/Kane Inc. copyright registrations by written agreement.

16. At the beginning of September 2013, Ms. Kane and Mr. Palmer’s son told them that his wife was pregnant with their first grandchild and, subsequent to that, in mid-September 2013, Ms. Kane discovered one of Palmer/Kane’s images, “Teen Ballerinas” (Image 13 below) in the DK publication: “The Pregnant Body Book” after she purchased it for her daughter-in-law.

17. Palmer/Kane began researching DK’s use of Palmer/Kane’s photographs in September 2013, and has discovered the multiple infringing uses identified in this Complaint.

18. As more fully set forth below, all of the Palmer/Kane images at issue in this Complaint (identified at Table 1 below) have been registered with the U.S. Copyright Office under a certificate bearing the registration number as stated in Table 1, and Exhibit A, as to that photograph. The Palmer/Kane images at issue in this Complaint were registered with the Copyright Office as follows:

Table 1

Image No.	Name	Registration No. (Date)
01	“Dancer at the UTE Pow Wow”	VAu 529-623 (June 25, 2001)
02	“Loving Twins”	VA 1-297-358 (February 2, 2005)
03	“Vancouver Traffic Jam”	VA 1-297-358 (February 2, 2005)
04	“Father and Son Using Telescope”	VAu 419-602 (May 29, 1998)
05	“Father Kids Telescope”	VA 1-297-358 (February 2, 2005)
06	“Family Watching Falling Star”	VAu 529-623 (June 25, 2001)
07	“Vintage Sleds”	VAu 1-116-324 (April 25, 2012)
08	“Family Feeding Ducks”	VA 1-297-358 (February 2, 2005)
09	“Boys and Bear”	VA 1-297-358 (February 2, 2005)
10	“I.M. Pei Pyramid”	VAu 529-623 (June 25, 2001)
11	“Tractor at Night”	VA 1-857-162 (April 15, 2013)
12	“Kids Marching Band”	VAu 500-820 (September 1, 1999)
13	“Teen Ballerinas”	VAu 658-134 (February 2, 2005)
14	“Cherry Picker”	VA 1-885-070 (October 25, 2013)
15	“Executive Handwriting”	VAu 529-623 (June 25, 2001)
16	“Business Strategy”	VAu 529-623 (June 25, 2001)
17	“Executive Calculations”	VAu 529-623 (June 25, 2001)
18	“Car Accident Victim Being Treated”	VA1-297-358 February 2, 2005
19	“Girl with Skating Instructor”	VAu 529-623 June 25, 2001
20	“Dispute Over Basketball Game”	VAu 529-623 June 25, 2001
21	“Shopping for a Pleasure Boat”	VAu 529-623

		June 25, 2001
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Copyright Infringement by DK Publishing

19. DK published, used and/or continues to use each of the photographs in Table 1, in the publications listed as to each such photograph. Each of such uses for the 3 years prior to Palmer/Kane's discovery of such use (on or about September 1, 2013) was and/or continues to be unlicensed or beyond the scope of any license. Accordingly, under the separate-accrual rule applicable to copyright infringement claims, each of DK's unlicensed uses of Palmer/Kane's photographs for the 3 years prior to Palmer/Kane's discovery of such use (on or about September 1, 2013) and continuing constitutes a separate infringement. Thus, DK's infringing use of Palmer/Kane's photographs for the 3 years prior to Palmer/Kane's discovery of such use (on or about September 1, 2013) and continuing was and is unlicensed and therefore infringing.

20. The use by DK of every Palmer/Kane image identified in Table 1 is infringing because of one or more of the following acts or omissions by DK:

- a. DK used the image without obtaining a license;
- b. DK obtained a license to publish in a foreign jurisdiction and then published an Americanized version of the publication in the U.S. without a license to publish in the U.S.
- c. DK Archived high resolution copies of images and subsequently used them without permission;
- d. DK exceeded license scope with regard to: image size; frequency of insert; print run quantities; geographic distribution; language; and/or the term of permitted use;

- e. DK published publications as e-books and in other digital format without a license for that format;
- f. DK provided e-books to library services such as OverDrive and Gale Virtual Reference Library that permit unlimited access to patrons from anywhere in the world;
- g. DK provided e-books for Nook, Kindle, Google Books, and made them available on the DK app on iTunes, for unlimited retail sales; and/or
- h. DK published new editions in alternative formats without a license.

21. DK operates its own stock photography business, “dkimages,” through which DK sells limited licenses for use of its own wholly-owned copyrighted images. The general terms for dkimages’ limited licenses are similar to those of other stock photography companies such as Corbis and Alamy. Therefore, DK is fully aware of the requirement for a renewal license before the image can be used in a new publication, in any new format, or for any use outside the scope specified in the limited license. For example, in its own licensing “Terms & Conditions” (attached hereto as Exhibit B) dkimages states:

3.1 DK grants to the Client a non-exclusive and non-assignable right to use and reproduce the High Res Pictures, solely to extent explicitly stated in this agreement . . . 3.2 Use of the High res Picture is strictly limited to the use, medium, period of time, print run, placement, size of High res Pictures, territory and any other restrictions specified in the Rights and Restrictions.

22. Yet, in instances where it did obtain a license for use of a Palmer/Kane image, DK disregarded the terms of the license and willfully infringed Palmer/Kane’s copyrights.

23. Facts known to Palmer/Kane regarding the specific license (or absence thereof) as to each image identified in Table 1, as well as the scope of use of each photograph, are set forth below.

24. The photograph entitled “Dancer at Ute Pow Wow” shown in Exhibit A as Image 01 was registered under Certificate of Registration No. VAu 529-623. It appears in the DK publication: “Eyewitness Travel Guide: Arizona & the Grand Canyon.” The book was published in the U.S. by DK on 12/27/2005 and 1/27/05. DK subsequently republished revised editions in 2006, 2008, 2010, 2012 and on November 3, 2015, all using Palmer/Kane Image 1. The 2010 revision was republished in November 2011 as part of the Gale Virtual Reference Library subscription. The publication is available for purchase on the DK website, www.dk.com/us/ and a separate DK Eyewitness Travel Guides website, www.traveldk.com, as an e-book and in print. The publication is also available for purchase as an e-book or a PDF and to “FIND in a library” on OverDrive www.overdrive.com. Dorling Kindersley India obtained a limited license in Hong Kong for the use of Image 01 on 4/26/2004. However, DK cancelled this license on 5/28/04 seeking a rate reduction. A second limited license was issued, also on 5/28/04, at a reduced fee of approximately \$89. No license was sought or obtained for publishing the Americanized version of the book in the U.S. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 01, for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

25. The photograph entitled “Twins” shown in Exhibit A as Image 02 was registered under Certificate of Registration No. VA 1-297-358. DK obtained a limited license in the United Kingdom (“U.K.”) on 4/18/2006 for the use of Image 02. No

license was sought or obtained for publishing the Americanized version of the book in the U.S. Image 02 appears in the DK publication "Arthritis: Your Comprehensive Guide," published in the U.S. on July 31, 2006, it was republished on July 20, 2009. The publication was published as an e-book in 2006, and an updated version of the e-book was published in 2009 and is available for purchase as an e-book on the DK website, www.dk.com/us/. The publication is also available for purchase as an e-book and to "FIND in a library" on OverDrive www.overdrive.com. No additional licensing was requested or issued. The publication is also distributed internationally and has been translated into multiple languages. On information and belief, DK's use of Palmer/Kane's photograph, Image 02, for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

26. The photograph entitled "Vancouver Traffic Jam" shown in Exhibit A as Image 03 was registered under Certificate of Registration No. VA 1-297-358. DK obtained a license on 4/18/2006 for the use of Image 03 in the U.K. No license was sought or obtained for publishing the Americanized version of the book in the U.S. It appears in the DK publication "Arthritis: Your Comprehensive Guide," published in the U.S. on July 31, 2006, it was republished on July 20, 2009. The publication was also published as an e-book in 2006, and an updated version of the e-book was published in 2009 and is available for purchase as an e-book on the DK website, www.dk.com/us/. The publication is also available for purchase as an e-book and to "FIND in a library" on OverDrive www.overdrive.com. No additional licensing was sought or obtained. The publication is also distributed internationally and has been translated into multiple languages. On information and belief, DK's use of Palmer/Kane's photograph, Image

03, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

27. The photograph entitled “Father and Son with Telescope” shown in Exhibit A as Image 04 was registered under Certificate of Registration No. VAu 419-602. It appears in the DK publication “Eyewitness Companions: Astronomy” published in the U.S. on April 3, 2006. The image appears in four different insertions in the publication. This publication is available for purchase on the DK website, www.dk.com/us/ as an e-book. The publication is also available for purchase as an e-book and to “FIND in a library” on OverDrive www.overdrive.com. No licensing was requested or obtained. The publication is also distributed internationally and has been translated into multiple languages. The publication also was republished in June 2009 as part of the Gale Virtual Reference Library subscription. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 04, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

28. Image 04 also appears on the cover of the DK publication “Starry Sky” published in the US as an e-book in 2012 and is available for purchase on the DK website, www.dk.com/us/. It is also available for Kindle (published 1/9/13) and on the DK app on iTunes. No license was ever issued to DK for this use of Image 04. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 04, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

29. Image 04 also appears twice in the DK publication “The Night Sky Month by Month” published in the U.S. on January 17, 2011. It was licensed in the U.K. on

8/31/2010. No license was sought or obtained for publishing the Americanized version of the book in the U.S. The actual use of the image occurs as two insertions: 1/8 page but also as a spread across two full pages – the latter expressly marked as: “content previously published in UNIVERSE.” No additional licensing was requested or obtained by DK. The publications are available for purchase on the DK website, www.dk.com/us/ as a hardback book and as an e-book. The publication is also available to purchase as e-an book or to “FIND in a library” on OverDrive at www.overdrive.com. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 04, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

30. The photograph entitled “Father Kids Telescope” shown in Exhibit A as Image 05 was registered under Certificate of Registration No. VA 1-297-358. It appears in the DK publication “DK Eyewitness Guides: Mars” published on September 6, 2004 and again on November 25, 2004. It published as an e-book on August 4, 2005. Corbis issued a limited license to DK on June 28, 2004 for a fee of \$100 for an interior insertion. A subsequent edition of this book added Palmer/Kane’s Image 05 to the front and back covers while retaining the interior insertion. The publication is available for purchase on the DK website, www.dk.com/us/, as an e-book. The publication is also available to purchase as an e-book or to “FIND in a library” on OverDrive at www.overdrive.com. The publication is also available worldwide and has been translated into multiple languages. The publication also was republished in November 2010 as part of the Gale Virtual Reference Library subscription. On information and belief, DK’s use of

Palmer/Kane's photograph, Image 05, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

31. The photograph entitled "Family Watching Falling Star" shown in Exhibit A as Image 06 was registered under Certificate of Registration No. VAu 529-623. This image appears in the following DK publication "Star Gazer" published February 21, 2005 featuring Image 06 as a 2-page spread and on the front cover. There is no photo credit to Gabe Palmer for use of Palmer/Kane's Image 05 on the cover of this publication. A single license for Image 06 was issued to DK in the U.K. on 1/31/05. No license was sought or obtained for publishing the Americanized version of the book in the U.S. On June 2, 2015 DK published a complete reformatted unabridged version of Stargazer renamed "Eyewitness Explorer: Night Sky Detective." An e-book version of this book was published on the same day. No additional license was obtained for this additional use of Palmer/Kane's Image 06. Both versions of this publication are available for purchase on the DK website, www.dk.com/us/. The publication is also available for purchase as an e-book and to "FIND in a library" on OverDrive www.overdrive.com. The publication "Eyewitness Explorer: Night Sky Detective" also is being republished in March 2016 as part of the Gale Virtual Reference Library subscription. On information and belief, DK's use of Palmer/Kane's photograph, Image 06, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

32. Image 06 was also used in a DK publication called "Nature Explorer" which published on April 19, 2010. No license was obtained by DK for use of Palmer/Kane's Image 06, which appears on the back cover and in an interior two-page

spread of this publication. The publication is available as an e-book on the DK website, www.dk.com/us/. The publication is also available for purchase as an e-book and to “FIND in a library” on OverDrive www.overdrive.com. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 06, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

33. The photograph entitled “Vintage Sleds” shown in Exhibit A as Image 07 was registered under Certificate of Registration No. VAu 1-116-324. It appears in the DK publication “Digital Photography Through the year” which published in the U.S. on September 17, 2012 in print and e-book versions in the US. DK obtained a limited license on October 2012 almost 3 weeks after the book was published. The publication includes Palmer/Kane’s image as a 2-page spread equivalent to a full page insertion. Despite knowing exactly how Image 07 was used in the published book, DK sought and obtained a license for 1/8 of a page in a retail book with a 50,000 print-run. The license terminated on October 1, 2015. This publication is available for purchase as an e-book on the DK website, www.dk.com/us/ and no additional license has been sought or obtained by DK. The publication is also available for purchase as an e-book and to “FIND in a library” on OverDrive www.overdrive.com. The first edition of this publication was republished in September 2014 as part of the Gale Virtual Reference Library subscription. A new edition of this publication was published in 2016. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 07, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

34. The photograph entitled “Family Feeding Ducks” shown in Exhibit A as Image 08 was registered under Certificate of Registration No. VA 1-297-358. It appears in the DK publication “Duck Pond Dip” which was first published in the United States on May 29, 2006 using Image 08. The publication was revised and republished on October 18, 2012 still including the Palmer/Kane image. A single limited license for use of this image was issued to DK in the U.K. on November 13, 2002. No license was sought or obtained for publishing the Americanized version of the book in the U.S. Yet, the publication is available for purchase on the DK website, www.dk.com/us/, as an e-book and through the DK app through iTunes and as a Kindle book. The publication is also available for purchase as an e-book and to “FIND in a library” on OverDrive www.overdrive.com. The publication also was published as a Kindle book on 10/18/12. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 08, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

35. The photograph “Boys and Bear” shown as Image 09 was registered under Certificate of Registration No. VA 1-297-358. It appears in the DK publication “DK Eyewitness Books: Ecology” published on September 5, 2005, and as an e-book on February 3, 2011. A limited license was issued to DK for use of Image 08 on April 30, 2005. This license was canceled on June 21, 2005, and no other license was obtained by DK for use of Image 09. But, the publication is available for purchase on the DK website, www.dk.com/us/ in hard copy and as an e-book. The publication is also available for purchase as an e-book and to “FIND in a library” on OverDrive www.overdrive.com. The publication is also distributed internationally and has been

translated into multiple languages. The publication also was republished in December 2010 as part of the Gale Virtual Reference Library subscription. On information and belief, DK's use of Palmer/Kane's photograph, Image 09, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

36. The photograph entitled "I.M. Pei Pyramid" shown in Exhibit A as Image 10 was registered under Certificate of Registration No. VAu 529-623. It appears in the DK publication "How People Live" first published in the U.S. on November 3, 2003. On November 12, 2003, Corbis issued a limited license in the U.K. to DK. No license was sought or obtained for publishing the Americanized version of the book in the U.S. DK published an e-book version of the publication on July 5, 2012 and it is available for purchase on the DK website, www.dk.com/us/, as an e-book and as a PDF. It is also available for purchase from OverDrive at www.overdrive.com as an e-book and a PDF and as "FIND in your library." The publication also was republished in November 2013 as part of the Gale Virtual Reference Library subscription. On information and belief, DK's use of Palmer/Kane's photograph, Image 10, in this publication within three years of September 1, 2013 and continuing was and is unlicensed and therefore infringing.

37. The photograph entitled "Tractor at Night" shown in Exhibit A as Image 11 was registered under Certificate of Registration No. VA 1-857-162. It appears as a 2-page spread in the DK publication "Let's Look: Farm," published February 20, 2006 in print and e-book versions in the U.S. DK obtained a limited license to use Image 11 on January 16, 2006, as a 2-page spread with a print-run of only 10,000 copies and with no digital rights. The license expired on January 16, 2009. Yet, the publication is available

for purchase as an e-book on the DK web site, www.dk.com/us/. It is also available for purchase from OverDrive at www.overdrive.com as an e-book and a PDF and as “FIND in your library.” The publication also was republished in January 2011 as part of the Gale Virtual Reference Library subscription. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 11, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

38. The photograph entitled “Kids Marching Band” shown in Exhibit A as Image 12 was registered under Certificate of Registration No. VAu 500-820. It appears in the DK publication “DK Readers: Let’s Make Music,” first published in the U.S. on September 19, 2005. On July 25, 2013 DK published an e-book version of the book. A limited license was issued on June 28, 2005 to DK for use of Image 12. The license was limited to 50,000 print-only copies. No digital rights were granted and the license was terminated on April 15, 2008. No additional license was sought or obtained by DK. Yet, the publication is available for purchase as an e-book on the DK website, www.dk.com/us/, and from the DK App through iTunes. The publication also was published as a Kindle book on 7/25/13. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 12, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

39. The photograph entitled “Teen Ballerinas” shown in Exhibit A as Image 13 was registered under Certificate of Registration No. VAu 658-134. It appears in the DK publication “The Pregnant Body Book” published in the U.S. on May 30, 2011. A limited license was issued to DK for use of Image 13 as a 1/4 page insertion for 50,000 print and digital copies. The license expired on 6/1/14. Yet, this publication is available

for purchase on the DK web site, www.dk.com/us/, in hardbound and e-book formats. It is also available for purchase from OverDrive at www.overdrive.com as an e-book and as “FIND in your library.” The publication in English is also distributed worldwide. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 13, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

40. The photograph entitled “Cherry Picker” shown in Exhibit A as Image 14 was registered under Certificate of Registration No. VA 1-885-070. It appears in the DK publication “Science: The Definitive Visual Guide” (published in the U.S. on September 19, 2011) in print and e-book versions. This publication remains available for purchase as a paperback and as an e-book on the DK website, www.dk.com/us/. It is also available for purchase from OverDrive at www.overdrive.com as an e-book and as “FIND in your library.” On information and belief, DK’s use of Palmer/Kane’s photograph, Image 14, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

41. The photograph entitled “Executive Hand Writing” shown in Exhibit A as Image 15 was registered under Certificate of Registration No. VAu 529-623. It appears twice in the DK publication “Work/Life: Succeed at Negotiating” (published in the U.S. on December 18, 2006) and once in the DK publication “Work/Life: Understand Selling,” (published in the U.S. on December 18, 2006). Two limited license were issued to DK on May 24, 2006, one for a 1/8th page insertion and one for a 1/4 page. Both licenses were for print-only 50,000 copies and both terminated on May 24, 2009. Yet, both publications are available for purchase as e-books on the DK website,

www.dk.com/us/, even though no e-book rights were licensed to DK and the licenses have expired. Both publications are available for purchase from OverDrive at www.overdrive.com as an e-book and as “FIND in your library.” Both publications are also distributed internationally and have been translated into multiple languages. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 15, in these publications for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

42. The photograph entitled “Business Strategy” shown in Exhibit A as Image 16 was registered under Certificate of Registration No. VAu 529-623. It appears three times in the DK publication “Work/Life: Succeed at Negotiating” (published in the U.S. on December 18, 2006). A limited license was issued to DK in the U.K. for use of Image 16 on May 22, 2006. No license was sought or obtained for publishing the Americanized version of the book in the U.S. This publication is available for purchase in digital format on the DK website, www.dk.com/us/. It is also available for purchase from OverDrive at www.overdrive.com as an e-book and as “FIND in your library.” The publication is also distributed internationally and has been translated into multiple languages. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 16, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

43. The photograph entitled “Executive Calculations” shown in Exhibit A as Image 17 was registered under Certificate of Registration No. VAu 529-623. It appears in the DK publication “Work/Life: Understand Selling,” (published in the U.S. on December 18, 2006). A limited license was issued to DK in the U.K. for the use of

Image 17 on April 17, 2007, four months after publication. No license was sought or obtained for publishing the Americanized version of the book in the U.S. Nevertheless, this publication is available for purchase as an e-book on the DK website, www.dk.com/us/. It is also, available for purchase from OverDrive at www.overdrive.com as an e-book and as “FIND in your library.” The publication is also distributed internationally and has been translated into multiple languages. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 17, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

44. The photograph entitled “Car Accident Victim Being Treated” shown in Exhibit A as Image 18 was registered under Certificate of Registration No. VA 1-297-358. It appears in the DK publication “Human,” (published in the U.S. on October 4, 2004). A limited license was issued to DK in the U.K. on July 27, 2004. No license was sought or obtained for publishing the Americanized version of the book in the U.S. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 18, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

45. The photograph entitled “Girl with Skating Instructor” shown in Exhibit A as Image 19 was registered under Certificate of Registration No. VAu 529-623. It appears in the DK publication “Ice Skating Stars” (published in the U.S. January, 2004). A limited license was issued to DK on August 29, 2003. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 19, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

46. The photograph entitled “Dispute Over Basketball game” shown in Exhibit A as Image 20 was registered under Certificate of Registration No. VAu 529-623. It appears in the DK publication “Re-imagine (published in the U.S. July 1, 2009). A limited license was issued to DK in the U.K. on July 9, 2003. No license was sought or obtained for publishing the Americanized version of the book in the U.S. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 20, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

47. The photograph entitled “Shopping for a Pleasure Boat” shown in Exhibit A as Image 21 was registered under Certificate of Registration No. VAu 529-623. It appears in the DK publication “Trends” (published in the U.S. May 30, 2005). A limited license was issued to DK in the U.K. on April 28, 2005. No license was sought or obtained for publishing the Americanized version of the book in the U.S. On information and belief, DK’s use of Palmer/Kane’s photograph, Image 21, in this publication for the three years prior to September 1, 2013 and continuing was and is unlicensed and therefore infringing.

**COUNT I
(COPYRIGHT INFRINGEMENT)**

48. Palmer/Kane repeats and re-alleges each allegation set forth above in paragraphs 1-47.

49. Palmer/Kane is the sole proprietor of all rights, title and interest in and to the copyright of each of the photographs described and alleged above and in Exhibit A that have been registered with the United States Office of Copyright pursuant to 17 U.S.C.A. § 411(a).

50. Each of said photographs contains material wholly original to Palmer/Kane and is copyrightable subject matter under the laws of the United States.

51. DK has infringed, and continues to infringe, Palmer/Kane's copyrights, in violation of the Copyright Act, 17 U.S.C. §101 et seq., by knowingly and willfully publishing said photographs without the consent or authorization of Palmer/Kane.

52. DK's infringements were intentional, willful, reckless and/or malicious.

53. DK's unauthorized and infringing conduct caused Palmer/Kane significant injuries, damages, and losses in amounts to be determined at trial.

54. Palmer/Kane seeks all damages recoverable under any applicable agreements and/or the Copyright Act, including statutory or actual damages and DK's profits attributable to the infringing use of Palmer/Kane's creative works and the damages suffered as a result of the lack of compensation, credit and attribution. Palmer/Kane also seeks all attorneys' fees and any other costs incurred in connection with this lawsuit.

55. As a result of the above alleged infringements, Palmer/Kane has suffered and continues to suffer irreparable harm for which damages may be insufficient.

JURY TRIAL DEMAND

56. Pursuant to Fed. R. Civ. P. 38, Palmer/Kane hereby demands a trial by jury of all issues so triable in this matter.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Palmer/Kane requests that this Court enter judgment in its favor and providing the following relief:

- A. Entry of a preliminary and permanent injunction against DK and anyone working in concert with DK from copying, displaying, distributing, advertising, promoting, selling or offering to sell Palmer/Kane's photographs, or creating, obtaining, and using substantially similar photographs, and requiring DK to deliver to the Court for destruction or other appropriate disposition all materials representing Palmer/Kane's photographs, including digital files representing Palmer/Kane's photographs, in the control or possession of DK;
- B. An award to Palmer/Kane of all damages allowable under the Copyright Act, including, but not limited to, statutory and/or actual damages, including damages incurred as a result of Palmer/Kane's loss of licensing revenue, and DK's profits attributable to the above-alleged infringements, as well as damages suffered by Palmer/Kane as a result of the lack of credit and attribution;

- C. An award of Palmer/Kane's full costs, including litigation expenses, expert witness fees, interest, and any other amounts authorized by law, and attorneys' fees incurred in connection with this lawsuit; and
- D. Such other and further relief as this Court deems just and proper.

Dated: March 1, 2016

Respectfully submitted:

PALMER/KANE LLC,
By its attorneys,

/s/ Veronica Mullally Muñoz
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